marriage by a Missouri divorce obtained by the husband, refused to terminate the Oklahoma wife's rights in a statutory homestead. These cases too are easily distinguishable from the *Haddock* case—jurisdiction *in rem* over the marital relation (existing by virtue of the domicile of the plaintiff in the divorce suit) is quite different from jurisdiction over the absent defendant's interest in lands lying in a foreign state. For cases and statute opposed to *Haddock* v. *Haddock,* see 11 MICH. L. REV. 508.

EVIDENCE—IMPEACHING ONE'S OWN WITNESS.—In a prosecution for murder the state introduced witnesses identifying the accused as the murderer. On cross-examination they testified that they could not identify him, and the state was then permitted to contradict them by calling another witness and proving by him that they had identified the defendant as the murderer both at the station house and at the coroner's court. *Held,* (Miller and Cardozo, JJ. dissenting) that this was reversible error. *People* v. *De Martini,* (N. Y. 1914), 107 N. E. 501.

The court rests its decision upon the generally accepted rule that a party who calls a witness voluntarily cannot impeach him by calling another witness to prove that on a prior occasion the testifying witness has made contradictory statements. The reason for the rule being that "a party guarantees his witness' credibility" and holds him out as "worthy of belief." *Hurley* v. *State,* 46 Ohio St. 320; *Howard* v. *State,* 32 Ind. 478; *Becker* v. *Koch,* 104 N. Y. 394; *Johnson* v. *Leggett,* 28 Kan. 591; *Babcock* v. *People,* 13 Col. 515; *Warren* v. *Gabriel,* 51 Ala. 235. Nor does the fact that the witness is an adverse party warrant a departure from the rule. *Chandler* v. *Freeman,* 50 Mo. 239; *Helms* v. *Green,* 105 N. C. 251. Where, as in Vermont, the law requires the state to produce all the witnesses it can find, or in litigation involving the execution of a will or deed, where the attesting and subscribing witnesses must be called if possible, it is held that a party may impeach his own witnesses, because he is compelled by law to call them and so does not guarantee their credibility. *State* v. *Slack,* 69 Vt. 486; *Thornton's Executors* v. *Thornton's Heirs,* 39 Vt. 122; *Brown* v. *Bellows,* 4 Pick. (Mass.) 179; *Hildreth* v. *Aldrich,* 15 R. I. 163; *Morris* v. *Guffey,* 188 Pa. St. 534, 41 Atl. 731. The good sense of the rule as announced in the principal case has been much questioned. Professor WIGMORE believes "there never was any sound reason for the rule, and even if there had been, it is no longer to be tolerated as an impediment to the ascertainment of truth by the most direct and certain methods." See also 11 AMERICAN LAW REV. 261-265. The argument that a party guarantees the credibility of his witnesses has little or no force when applied to criminal cases, for the state's witnesses are often hostile, and no choice can be exercised in their selection. Moreover in criminal cases the public prosecutor in theory represents both sides and the state is as much interested in the acquittal of the accused as in his conviction. The decision in the principal case indicates that in the absence of statutory provision there is no relief from the common law rule. In England and many states of this country statutes have been passed allowing one to contradict his own

witness. As to whether or not a party may corroborate his witness, who has been impeached, by proof that out of court he made statements consistent with his testimony at the trial, there is a clear conflict of authority. That he may: *State* v. *Moon,* 20 Idaho 202; *Reynolds* v. *State,* 147 Ind. 3; *State* v. *Caddy,* 15 S. D. 167; *English* v. *State,* 34 Tex. Crim. 190. That he may not: *People* v. *Katz,* 209 N. Y. 311; *People* v. *Jung Hing,* 212 N. Y. 393; *Edwards* v. *Commonwealth,* 145 Ky. 560; *People* v. *Turner,* 1 Cal. App. 420; *Brown* v. *People,* 17 Mich. 429; *Commonwealth* v. *James,* 99 Mass. 438. Since, therefore, under the New York decisions the testimony in question was neither competent as impeaching not corroborating evidence, the decision of the majority opinion would seem to be sound.

EVIDENCE—JUDGE AS WITNESS.—Upon a trial for criminal libel the defendant moved that a judge from another county be called for the trial of the cause on the ground that the judge before whom the motion was made would be called as a material and necessary witness for the defendant. The motion was denied and in the course of the trial, when the judge was actually called to testify, he refused to do so, holding that the matter concerning which his testimony was offered was immaterial. *Held,* no error; that a judge cannot, over the objection of a party, be a witness in an action tried before him, in the absence of a statute so providing. *State* v. *Sefrit,* (Wash. 1914), 144 Pac. 725.

A judge is not at common law a competent witness in a case pending before him. *Maitland* v. *Zanga,* 14 Wash. 92; *Rogers* v. *State,* 60 Ark. 76; *Shockley* v. *Morgan,* 103 Ga. 156; *State* v. *De Maio,* 69 N. J. L. 590; *Gray* v. *Crockett,* 35 Kan. 66. He may, however, in a subsequent trial testify as to facts which transpired before him at a former trial. *Taylor* v. *Larkin,* 12 Mo. 103; *State* v. *Hindman,* 159 Ind. 586; *Sigourney* v. *Sibley,* 21 Pick (Mass,) 101. A judge may testify when the court of which he is a member is composed of several judges, provided there still remains a legal tribunal to try the cause. But when he so testifies he should not again return to the bench. *People* v. *Dohring,* 59 N. Y. 374; *People* v. *Miller,* 2 Park. Cr. (N. Y.) 197; *Morss* v. *Morss,* 11 Barb. (N. Y.) 510. This, however, does not help matters much for very often the court is composed of a single judge, or if more than one, all are necessary to constitute a legal tribunal. The reasons advanced to support the rule laid down in the principal case are that the functions of judge and witness in the same person at the same time are inconsistent; that the judge cannot administer the oath to himself; that in testifying the judge would necessarily take sides and the jury would very likely give his testimony undue weight, and should a non-suit be asked for it would place the judge in an embarrassing position, for he would have to pass on the weight of his own testimony. However weighty these reasons may have been in the past at the present day they do not seem to be very convincing. As stated by Professor WIGMORE, "In all these objections there is a modicum of truth. Yet is it necessary on that account to lay down a universal prohibition?" WIGMORE, EVIDENCE, § 1909.